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BEFORE THE

**Federal Communications Commission**

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WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Replacement of Part 90 by )  
Part 88 to Revise the Private )  
Land Mobile Radio Services and )  
Modify the Policies Governing Them )

PR Docket No. 92-235

and )

Examination of Exclusivity and )  
Frequency Assignment Policies )  
of the Private Land Mobile Radio )  
Services )

To: The Commission

**COMMENTS  
OF THE  
AMERICAN PETROLEUM INSTITUTE**

**THE AMERICAN PETROLEUM INSTITUTE**

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**SUMMARY**

Should the FCC be granted the authority to impose competitive bidding or user fees on private users, API believes that user fees would be the superior alternative. Exclusivity should only be adopted as a policy if the participants are limited only to the members of the same general industry. The resale or lease of excess Private Land Mobile Radio Services ("PLMRS") capacity is highly undesirable, would lead to the introduction of speculation, and would further complicate the efforts of PLMRS users to obtain and utilize spectrum for critical communications which directly affect the public health, safety and welfare.

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**COMMENTS  
OF THE  
AMERICAN PETROLEUM INSTITUTE**

The American Petroleum Institute ("API"), by its attorneys and pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission" or "FCC"), hereby submits these Comments in response to the Further Notice of Proposed Rule Making ("Further Notice")<sup>1/</sup> adopted by the Commission in the above-styled proceeding. The date for filing these Comments

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<sup>1/</sup> 60 Fed. Reg. 37148 (July 19, 1995).

was extended from September 15, 1995 to October 16, 1995<sup>2/</sup> and, subsequently, to November 20, 1995.<sup>3/</sup>

# I. PRELIMINARY STATEMENT

1. API is a national trade association representing approximately 300 companies involved in all phases of the petroleum and natural gas industries, including exploration, production, refining, marketing, and transportation of petroleum, petroleum products and natural gas. Among its many activities, API acts on behalf of its members as spokesperson before federal and state regulatory agencies. The API Telecommunications Committee is one of the standing committees of the organization's Information Systems Committee. The Telecommunications Committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the oil and gas industries.

2. Reliable two-way land mobile radio is an essential tool in almost every phase of the oil and gas industries.

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<sup>2/</sup> Order Extending Comment and Reply Comment Period, 60 Fed. Reg. 48490 (September 19, 1995).

<sup>3/</sup> Order Extending Comment and Reply Comment Period, 60 Fed. Reg. 53893 (October 18, 1995).

Communications must be maintained during exploration activities for the direction of personnel and equipment, control of and synchronization of multiple geophysical acoustical signal systems for oil and gas exploration, as well as for telemetering geophysical data. Drilling operations, by their very nature, involve hazards that can be minimized with reliable two-way mobile radio communications. After production is established, mobile radio continues to play a critical role in providing communications for the management of production sites where careful supervision must be maintained over the operation of valves, pumps, compressors and separation equipment. Operation of the extensive pipeline gathering systems and long-distance, crude, petroleum products and natural gas pipelines would not be possible without reliable two-way mobile radio communications. These same types of reliable communications are absolutely necessary in petroleum refineries where the safety of personnel demands clear channels of communication. Even in the marketing and distribution of these energy sources, mobile radio continues to play an important role in the transfer of natural gas at city gates, and the loading and delivery by rail and tank trucks of refined petroleum products to industrial, commercial and residential customers.

3. The petroleum and natural gas industries were pioneers in the use of two-way mobile radio for industrial applications. In recent years, some two-way mobile radio communications have been served by other than the traditional private system. Even though use of private systems may be supplemented with cellular and Specialized Mobile Radio ("SMR") systems, where those services are available and can meet some needs, there remains a very critical requirement for privately-owned and operated two-way mobile radio systems in these industries. The energy industries also expect to be users of new Personal Communication Systems ("PCS") in areas where these services are offered and can be utilized for selected functions. Notwithstanding the advent of these additional communication options, the oil and gas industries will continue to be large users of private land mobile radio systems for several reasons. First, public switched systems frequently become incapacitated during emergency conditions because of peak subscriber demand. Private systems are essential in these circumstances to insure the ongoing safe execution of energy operations where hazardous conditions could develop without reliable communications. Moreover, private systems will continue to be needed in areas where there are inadequate or no public telecommunications facilities.

4. The FCC tentatively concluded in the Further Notice that employing "market-based incentives" would encourage more efficient use of shared spectrum and specifically stated that user fees, spectrum auctions, and exclusivity are the contemplated solutions.<sup>4/</sup> Although the FCC currently lacks statutory authority to impose user fees or to conduct spectrum auctions in these bands, it invited comment in anticipation of receiving statutory authority through the pending telecommunications or budget legislation, and specifically cited the Senate Budget Committee's Funding Year 1996 Budget Resolution. Additionally, the FCC sought comment on a proposal to reward users who convert to narrowband technology by a specified date with (1) exclusive channel rights; and (2) the authority to lease excess capacity.

5. Should the FCC be granted the authority to impose competitive bidding or user fees on private spectrum users, API strongly believes that reasonably calculated users fees are the superior alternative. Exclusivity should only be adopted as a policy if the participants are limited only to the members of the same radio service. The resale or lease of excess PLMRS capacity is not in the public interest

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<sup>4/</sup> Further Notice at ¶ 110.



because it would encourage speculation, and would act to undermine the ability of PLMRS users to build and operate the reliable communications networks which serve their own internal communications requirements that are both unique and critical in a vast number of circumstances.

## II. COMMENTS

### A. **Spectrum Auctions Are Not Viable in the PLMRS Bands**

6. The Commission solicited comments on whether user fees or spectrum auctions are superior for distributing spectrum.<sup>5/</sup> Should user fees be chosen, comments were requested as to the method or formula by which the fees should be developed. The FCC tentatively concluded that such a method or formula would account for bandwidth, geography, and population.<sup>6/</sup> API concurs with the FCC that a properly designed fee structure should motivate users to utilize spectrum more efficiently with the fee effectively subjugating the licensee at some point in the future to a "direct economic cost" for inefficient spectrum use. A

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<sup>5/</sup> Further Notice at ¶¶ 110-117.

<sup>6/</sup> Further Notice at ¶ 136.

licensee should not be penalized in the immediate future since many installations may not yet be amortized.

7. API submits that a properly designed fee would account for the amount of spectrum being utilized; the quantity of geographic area covered by the signal; the character of use (exclusive or shared); the population of the area(s) served; and the fact that the fee is not designed for commercial services. The fee thus should not burden basic infrastructure services, whose business is not the sale of telecommunications services, but the provision of essential services upon which the public health, safety and welfare depends.

**B. Exclusive Channel Rights Are Possible Only if Limited to Existing Services**

8. The Commission tentatively concluded in the Further Notice that a "shared exclusivity" plan would provide licensees with the ability and motivation to employ more spectrum efficient technologies. Based on the exclusive use overlay concept discussed in the Refarming Notice, the plan would allow existing licensees in the 150-174, 421-430, 450-470 and 470-512 MHz bands who enter into "exclusivity agreements" with neighboring co-channel

licensees, and who convert to narrowband technology, to preclude new licensees from being licensed in the contractors' combined service area.<sup>2/</sup>

9. PLMRS spectrum was divided into different radio services largely because the separate services have unique needs that are frequently incompatible and cannot be met uniformly or consistently with commercial services. These circumstances are still applicable to petroleum and natural gas users. As such, exclusivity arrangements could only be contemplated, and accommodated, between similar energy industry users. API opposes the introduction of channel exclusivity concepts in the private services that are calculated to ultimately convert private spectrum for commercial services.

**C. Offset UHF Licensees Require a Carefully Structured Transition Plan**

10. A series of carefully planned steps must be taken between the publication date, and the effective date, of the FCC's plan to consolidate the private land mobile services. API supports adoption of the plan and time frame advocated

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<sup>2/</sup> Further Notice at ¶ 129.

by the Land Mobile Communications Council ("LMCC"). That schedule is consistent with the following:

- March 1, 1996 - September 1, 1996

From the date the consolidation plan is published, the offset licensees should be given a minimum six month period to declare whether they wish to convert to primary status. Licensees may declare primary status if they:

1. Register their coordinates with a coordinator and the FCC; or
2. Move their existing low power operation to newly-designated low power channels. (In some instances the newly-designated low power channels may be the very channels on which the licensee is currently operating. As such, the licensee would obviously not be required to move to achieve a primary designation.)

- September 1, 1996 - March 1, 1997

Once offset licensees have declared whether or not they will convert to primary status, frequency coordinators should have an additional six-month period to calculate which specific frequencies should be designated for low power operations.

- October 1, 1997

Incumbent UHF offset licensees who have declared primary status, whether operating at full or low power, would have to convert to 12.5 kHz channels no later than October 1, 1997, or operate on a secondary basis. As of October 1, 1997, the stay imposed on the acceptance of applications for the newly created 12.5 kHz channels would be lifted. The licensees of secondary low power systems that choose not to convert to primary status would be on notice that their systems would be subject to having primary full power systems licensed on the same channel and on adjacent channels (and would be subject to

interference from those primary full power systems).

11. To further the FCC's goal of promoting efficient spectrum use, offset licensees could also use the time leading up to the October 1, 1997 deadline to negotiate "shared exclusivity" arrangements. Such arrangements between offset licensees would not be possible without this organizational time period. Shared exclusivity arrangements must allow for the offset licensees to study and understand: (1) where the new offset channels are located; (2) which channels, due to coordination difficulties, are actually usable; and (3) whether potential "shared exclusivity" partners will be able to move to the new offset channels.

12. Without implementing this transition plan, many current offset licensees would have their operations severely disrupted by new 12.5 kHz licensees who apply for licenses on top of, or adjacent to, the existing low power offset channels.

**D. Do Not Permit the Lease or Resale of Excess Capacity**

13. The FCC tentatively concluded that PLMRS users that lease excess capacity under the shared exclusivity plan will "have that aspect" of their operations regulated as a Commercial Mobile Radio Service provider.<sup>8/</sup> API, while supporting the concept of allowing PLMRS licensees to retain the right to share excess capacity, adamantly opposes the lease or resale of such capacity.<sup>9/</sup> An entity which is nominally a private user could use that status as the foundation to raid PLMRS spectrum and then use that spectrum to build a large CMRS that may displace critical private systems used to support this country's infrastructure.

14. Moreover, ample CMRS spectrum already exists. Cellular, SMR, PCS and other commercial services already have expansive allocations, a not insignificant amount of which was reallocated from the private services. The well-documented spectrum needs and deficiencies facing the PLMRS

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<sup>8/</sup> Further Notice at ¶ 135.

<sup>9/</sup> Sharing arrangements, unlike commercial operations, do not seek to generate profit or to build and operate communications systems as a business. Instead, sharing arrangements simply allow similarly situated entities to avoid building redundant services in the same service area and allow for basic cost recovery.

community<sup>10/</sup> cannot tolerate the further usurpation of spectrum for commercial speculation. In fact, NTIA stated that an additional 50 MHz is required to meet advanced private land mobile service needs.<sup>11/</sup> The commercial type arrangements contemplated by the lease or resale of excess capacity would, unwisely, encroach on the already congested PLMRS bands.

**E. Do Not Institute Exclusive Use Overlay**

15. The Commission surmised in the Further Notice that, if auctions were selected over users fees, due to the unique, shared nature of PLMRS spectrum and the current lack of suitable spectrum for relocation of those shared users, it would be prudent to conduct auctions based on geographic areas which "overlay" incumbent licensees.<sup>12/</sup> API is adamantly opposed to overlay auctions because they would act to stifle the growth of existing PLMRS systems and would unnecessarily congest already overly burdened channels.

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<sup>10/</sup> U.S. National Spectrum Requirements: Projections and Trends, U.S. Department of Commerce, National Telecommunications and Information Administration ("NTIA") (April 1995).

<sup>11/</sup> Id. See also, Land Mobile Spectrum Planning Options, U.S. Department of Commerce, National Telecommunications and Information Administration, at ix, 2-1 (October 1995).

<sup>12/</sup> Order at ¶¶ 142-143.



**F. Third Party Providers Cannot Meet Critical PLMRS Needs**

16. The Further Notice contains a quote which could, unfortunately, be misconstrued by those who refuse to understand the fundamental purpose behind the existence of PLMRS operations:

We acknowledge the long-standing tradition of private mobile radio services to provide for the safety and general welfare of the American populace and promote the economic vitality of this country's commerce and industrial structure. We note, however, that many private communications services can be successfully satisfied by third-party commercial carriers as evidenced by the success of specialized mobile radio (SMR) systems.<sup>13/</sup>

As evidenced by the rampant speculations in the bands available to commercial applicants above 806 MHz, these entrepreneurs have yet to demonstrate the true success presumed by the author of this statement.

17. Commercial systems do not, and in the foreseeable future will not, meet a majority of the important safety,

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<sup>13/</sup> Order and Further Notice at ¶ 4.

design, and reliability needs of private users. The above-cited quote should not be interpreted otherwise.<sup>14/</sup>

### III. CONCLUSION

18. Should the FCC be granted the authority to impose competitive bidding or user fees on private users, API believes that user fees would be the superior alternative. Exclusivity should only be adopted as a policy if the participants are limited only to the members of the same general industry. The resale or lease of excess PLMRS capacity is highly undesirable, would lead to the introduction of speculation, and would further complicate the efforts of PLMRS users to obtain and utilize spectrum for critical communications which directly affect the public health, safety and welfare.

**WHEREFORE THE PREMISES CONSIDERED,** the American Petroleum Institute respectfully submits the foregoing Comments and strongly urges the Federal Communications

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<sup>14/</sup> API also encourages the Commission to consider its long history of recognizing that spectrum set aside for the unique needs of private users must be protected from encroachment by third party commercial services. Those unique needs cannot be met by licensed third party entrepreneurs. See generally, API Comments and Reply Comments in PR Docket No. 89-45, filed May 19, 1989 and July 5, 1989, respectively.

Commission to proceed in this matter in a manner fully  
consistent with the views expressed herein.

Respectfully submitted

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